

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF MINNEAPOLIS

In the Matter of the Applications for Class B and
Class E Licenses of Baku Entertainment &
Restaurants, LLC and Fatemeh Engen

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Eric L. Lipman on January 26, 2009 at the Office of Administrative Hearings in St. Paul, Minnesota. The parties submitted Post-Hearing Memoranda on February 9, 2009 and Responses on February 17, 2009. The hearing record closed on February 17, 2009.

Michael R. Moline, Moline and Associates, appeared on behalf of Baku Entertainment & Restaurants, LLC and Fatemah Engen d/b/a the "International Ballroom" and the "Green Olive." Joel M. Fussy, Assistant City Attorney, appeared on behalf of the Division of Licenses and Consumer Services of the City of Minneapolis ("the City").

STATEMENT OF THE ISSUE

1. Whether grounds exist to deny the application of Baku Entertainment & Restaurants, LLC and Ms. Engen for a Class B On-Sale Liquor License to operate a new establishment at 3003 – 27th Avenue South, Minneapolis, Minnesota 55406, to be known as "The International Ballroom"?

FINDINGS OF FACT

1. Baku Entertainment & Restaurants, LLC (hereinafter "Baku") is a Minnesota limited liability company with a registered office of 3003 – 27th Avenue South, #400, Minneapolis, MN 55406.¹

2. The building containing the addresses of 3003 and 3009 – 27th Avenue South, Minneapolis, MN 55406, also known as the "Oddfellows Building." Two limited liability companies purport to have interests in the Oddfellows Building – Lake 27, LLC and Lake Minnehaha, LLC. Both companies are controlled by Mohammad Sabri, who is also known as "Hamoudi Sabri."²

¹ Notice and Order for Hearing, at 2 (April 16, 2008).

² Exs. 1 – 3 and 13 - 16.

3. According to public business organization records maintained by the Office of the Minnesota Secretary of State, Lake 27 LLC is an active entity with a registered address of 3003 – 27th Avenue South, #400, Minneapolis, MN 55406. Lake Minnehaha LLC shares the same 27th Avenue business address as Lake 27, however, it is an inactive entity.³

4. On July 1, 2005, the Minneapolis City Council denied an application submitted by Baku for a Class B On-Sale Liquor License with Sunday Sales for the third floor space at 3003 – 27th Avenue South. The Council cited as its reasons for denial of the application included a “lack of parking, area already well-served with alcohol establishments, impact on the neighborhood and criminal activity in the area.”⁴

5. In the spring of 2007, the shareholders of Baku – Mohammad Sabri, Ila Teske and Emebet Habte – transferred their shares and interests in the company to Fatemeh Engen. Following this transfer of interests, Ms. Engen was the sole owner and shareholder of Baku Entertainment & Restaurants, LLC.⁵

6. Prior to her taking over control of Baku, Ms. Engen was self-employed. During the years 1983 through 2001, Ms. Engen owned and operated her own hair salon and sold cosmetics. Presently, Ms. Engen works as an independent hairdresser in a salon that is owned by another person. Ms. Engen has never worked in a restaurant or in the hospitality industry.⁶

7. On June 1, 2007, Ms. Engen, as the sole shareholder of Baku, filed an application with the Minneapolis Division of Licenses and Consumer Services for a Class E On-Sale Wine with Strong Beer license to operate a new establishment to be known as the “Calypso Cafe.” The site of the new restaurant was to be 3009 – 27th Avenue South. Ms. Engen later renamed this same restaurant venture the “Green Olive.”⁷

8. On June 11, 2007, Ms. Engen, as the sole shareholder of Baku, filed an application with the Minneapolis Division of Licenses and Consumer Services for a Class B On-Sale Liquor license to operate a new establishment to be known as the International Ballroom at 3003 – 27th Avenue South.⁸

9. The International Ballroom is intended to operate as an event center.⁹ The business plan submitted to the City describes a “full stage, a quality sound system

³ Notice and Order for Hearing, at 2.

⁴ Ex. 38.

⁵ Testimony of Fatemah Engen.

⁶ *Id.*, Ex. 54; *compare*, Minneapolis Code of Ordinances § 362.120 (h) (“In addition to the information which may be required by the state liquor control commissioner's form, the application shall contain the following ... [W]hether applicant has ever been engaged as an employee in operation of a saloon, cafe, soft drink parlor or other business of similar nature. If so, when, where and for how long”).

⁷ Ex. 13 - 16. This application was stamped as received by the City's Department of Regulatory Services on June 12, 2007.

⁸ Exs. 1 – 4. This application was stamped as received by the City's Department of Regulatory Services on June 20, 2007.

⁹ Test. of F. Engen.

and a separate green room for live musical performances.” The plan also describes a long, “well-thought-out” and “easily accessible bar area to accommodate beverage services for large groups of people.”¹⁰

10. On each of the license applications that she submitted, Ms. Engen listed Baku as the owner and landlord of the property where the proposed establishments would be located.¹¹

11. The Oddfellows Building is located within Community Activity Center District C3A of Minneapolis. Restaurants are a permitted use in this District.¹²

12. In July of 2007, Ms. Engen was granted a food restaurant license by the City for the “Green Olive.”¹³

13. At the time Applicant submitted her applications for a Class E On-Sale Wine with Strong Beer license and a Class B On-Sale Liquor license, there were seven establishments within a one-block radius of the Oddfellows Building that were licensed by the City to sell alcohol. The establishments are:

- a. Manny's Tortas, 2700 East Lake Street;
- b. Town Talk Diner, 2707 East Lake Street;
- c. El Nuevo Rodeo, 2709 East Lake Street;
- d. T's Place, 2713 East Lake Street;
- e. Floating World Café, 3011 – 27th Avenue South;
- f. Minnehaha Liquor Store, 2613 East Lake Street; and,
- g. Schooner Bar at 2901 – 27th Avenue South.

These licensees are all within the quadrangle that runs on the north along 29th Street East between Minnehaha Avenue South (on the west) to 28th Avenue South (on the east) and has as its southern boundary between the two avenues, 31st Street East.¹⁴

14. The density of restaurants and other establishments within a 600-foot radius of the proposed location of the International Ballroom, if inclusive of its proposed 500-person capacity, could require up to 1,820 parking spaces.¹⁵ The most proximate lot to the International Ballroom has a capacity of 114 spaces, with 110 of those spaces allocated to the building owner, Lake 27, LLC, not Baku or the International Ballroom.¹⁶

15. However, the City now concedes that the Applicant “due to historical parking variances and grandfathering ... technically meets [the] minimum parking requirements” of the Minneapolis Code of Ordinances.¹⁷

16. El Nuevo Rodeo (hereinafter “ENR”) is a restaurant that is licensed to serve alcohol and operates on the first floor of the Oddfellows Building. During the period that Mr. Sabri has owned the Oddfellows Building, and while Baku’s applications

¹⁰ Ex. 46.

¹¹ Exs. 1 – 3 and 13 - 16.

¹² Exs. 137 and 141.

¹³ Exs. 9, 17 – 19 and 21; Test. of F. Engen.

¹⁴ Exs. 8 and 22.

¹⁵ Ex. 8.

¹⁶ See, Exs. 55 - 58.

¹⁷ *City’s Post Hearing Brief* at 2.

were pending, the City has approved an expansion of ENR's operations so as to include sidewalk café service. Additionally, and it is a matter as to which City staff expressed their disapproval at the evidentiary hearing, ENR has tended to operate more like a high-occupancy nightclub than a restaurant.¹⁸

17. Data maintained by the Minneapolis Police Department show that for the year 2007, the neighborhood surrounding the 2700 block of Lake Street had higher levels of crime in comparison to other areas of the City.¹⁹ Statistics for 2008 indicate this same trend.²⁰

18. As required by City Ordinance, a public hearing was held on Baku's application for a Class B On-Sale Liquor license for the International Ballroom. The hearing was held on September 18, 2007. Citizens living within 600 feet of the proposed location for the International Ballroom registered concerns about the parking, crowd control, litter and the impact of authorizing an additional alcohol-serving establishment in the area.²¹ One citizen expressed concern over the similarity of the proposal to the earlier rejected proposal for the same location.²²

19. City staff communicated with the Applicant, and those assisting Baku, frequently about the status of the application and the components needed to make the submissions complete.²³

20. On October 5, 2007, 117 days after the submission of its application for a Class E On-Sale Wine with Strong Beer license, the City notified Ms. Engen that her license application remained incomplete and that it would be administratively denied if not completed within thirty days.²⁴

21. On the same day, 108 days after the submission of its application for a Class B On-Sale Liquor license, the City notified Ms. Engen that her license application remained incomplete and that it would be administratively denied if not completed within thirty days.²⁵

22. During the early morning hours of October 14, 2007, officers of the Minneapolis Police Department were called to respond to a disturbance at the Oddfellows Building. The supervising officer, Sergeant Randy Buege, noted in his later report that he had observed approximately 500 people milling about the building and adjacent parking lots. These patrons were attending a party with music on the third floor of the Oddfellows Building. Private security guards were collecting a \$20.00 cover charge at the door of the event. When patrons were no longer being admitted to the event, the crowd became agitated and some patrons began throwing rocks. A total of

¹⁸ Ex. 206; Testimony of Michele Olds; Testimony of Ricardo Cervantes.

¹⁹ Exs. 8, 22.

²⁰ Test. of M. Olds, Exs. 135 - 36.

²¹ Test. of M. Olds, Exs. 8 – 9 and 22 - 23.

²² *Id.*

²³ Exs. 4, 17 and 29; Test. of M. Olds; Test. of F. Engen.

²⁴ Ex. 17.

²⁵ Ex. 4.

ten uniformed officers and two police sergeants were called to the scene to disperse the crowd and to enforce Sergeant Buege's order that the party be closed.²⁶

23. As of October 13 and 14, 2007, the third floor of the Oddfellows Building was purportedly under the exclusive control of Ms. Engen, and yet Ms. Engen did not hold any permit or licensure that would authorize her to host such an event in that space. At the evidentiary hearing in this matter, Ms. Engen testified that she was not the host of the event on October 13 and 14, 2007.²⁷

24. On November 14, 2007, 41 days after the dispatch of the October 5, 2007 letter, the City notified Ms. Engen that her applications remained incomplete and would be administratively denied.²⁸

25. Since the fall of 2008, the International Ballroom has operated as a licensed rental hall. Under this form of licensure, any person contracting for use of the Ballroom would likewise be responsible for providing for alcohol service. The Ballroom has hosted three events since it began operations as a rental hall.²⁹

26. Notwithstanding the fact that she holds a valid food restaurant license, Ms. Engen has since discontinued efforts to open the Green Olive. At the evidentiary hearing she withdrew her appeal with regard to the application for a Class E On-Sale Wine with Strong Beer license.³⁰

CONCLUSIONS

1. The Administrative Law Judge and the Minneapolis City Council have jurisdiction in this matter under Minn. Stat. §§ 14.50, 14.55, 340A.402 (3), and 340A.412 (2)(b) and the Minneapolis City Charter, Chapters 4 and 5.³¹

2. The City has complied with all relevant substantive and procedural legal requirements – including providing the Applicant adequate and timely notice of the evidentiary hearing.

3. The Minneapolis Charter authorizes the City Council to license and regulate all bars, taverns, restaurants and cafes.³²

4. In Minneapolis, it is unlawful to undertake on-site sales of alcohol, or to host events where alcohol is served and music is performed, without proper licensure.³³

²⁶ Ex. 42; *see also*, Ex. 24.

²⁷ Ex. 42; Test. of F. Engen.

²⁸ Exs. 5, 20 and 28; *see also*, Exs. 33 – 34 and 202.

²⁹ Test. of M. Olds; Test. of R. Cervantes; Test. of F. Engen.

³⁰ Test. of F. Engen.

³¹ *See also*, Minneapolis Code of Ordinance §§ 259.10 and 362.510.

³² *See*, Minneapolis Code of Ordinance §§ 259.10, 362.120 and 362.510.

³³ *See*, Minneapolis Code of Ordinances § 360.50 ("Unless operating under a Class A, Class B, Class C, or Class D "on sale" beer license, no music of any kind, either by phonograph, automatic piano or any other musical instrument or device of any kind or character, and no singing, dancing, vaudeville or similar

5. The event occurring on October 13 and 14, 2007 on the third floor of the Oddfellows Building was unlawful.

6. The City Council may grant or deny any application in accordance with the relevant provisions of Chapter 362 of the Minneapolis Code.³⁴

7. The Minneapolis Charter authorizes the licensing department to administratively deny any application that does not contain all necessary information within one hundred and twenty (120) days from the date of submission.³⁵

8. As the party proposing that certain action be taken, Ms. Engen has the burden of establishing by a preponderance of the evidence that the administrative denial of the application was improper.³⁶

9. Denial of the application for a Class B On-Sale Liquor License for a new establishment at 3003 – 27th Avenue South, Minneapolis, Minnesota, is an action that is supported by the hearing record. Good cause exists to deny the Applicant's on-sale liquor license application based upon the violations of applicable regulations relating to use of the premises; the Applicant's failure to furnish sufficient food, business and parking plans for review; and the concentration of such licensed establishments within a short radius of the proposed facility.

10. The Applicant has failed to establish by a preponderance of the evidence that the City should grant it an on-sale liquor license.

11. The Applicant has not established by a preponderance of the evidence that the denial of the application for a Class B On-Sale Liquor License for a new establishment at 3003 – 27th Avenue South, Minneapolis, Minnesota, was improper.

12. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

Based upon the foregoing Conclusions, and for the reasons explained in the accompanying memorandum, the Administrative Law Judge makes the following:

entertainment, stage show or amusement of any kind shall be permitted in any place operating under an "on sale" license. Nothing herein shall prohibit the use of radio, television, taped music or jukeboxes when such use does not constitute or become a nuisance"); Minneapolis Code of Ordinances § 362.120 (h) ("No person shall sell, exchange, barter, dispose of or keep for sale any liquor, as defined in section 360.10, without first having obtained a license as herein provided").

³⁴ See, Minneapolis Code of Ordinance § 362.510.

³⁵ See, Minneapolis Code of Ordinance § 360.130 (a).

³⁶ Minn. R. 1400.7300, subp. 5 (2007).

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Minneapolis City Council DENY the application for a Class B On-Sale Liquor License submitted by of Baku Entertainment & Restaurants, LLC and Fatemeh Engen.

Dated: March 3, 2009

/s/ Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This Report is a recommendation, not a final decision. The Minneapolis City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Pursuant to Minn. Stat. § 14.61, the City Council will not make its final decision until after it has provided each party adversely affected an opportunity to file exceptions and present argument to the Minneapolis City Council. Parties should contact the City Clerk, Council Information Division, 350 South Fifth Street, Room 304, Minneapolis Minnesota 55415-1382; telephone number 612-673-3136 to find out the process for filing exceptions or presenting argument.

The Minneapolis City Council is requested to serve notice of its final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

Baku's principal claim in its appeal is that its application for a Class B On-Sale Liquor License was denied because of the "pervasive ... political influence" of those opposing its licensure – specifically Councilman Gary Schiff and his staff. Arguing that Councilman Schiff's oversight of the licensing process prevented a dispassionate review of its application, Baku asserts:

The United States' representational democracy was designed to separate power between three branches of government so that the independence and integrity of its government would be guaranteed by the system itself, and never be dependent on the individuals who occupy positions of power and influence.³⁷

Despite the rhetorical flourish of its brief, there is no real evidence to suggest that there was improper pressure upon the Department of Regulatory Services staff by Councilman Schiff, or those working at the Councilman's behest, or that a fair assessment of Baku's application was impeded. The closest that Baku comes to its claim is an indelicately worded e-mail from Councilman Schiff's assistant, who exclaimed "Woo Hoo" at the news that Baku's application for a Class B license had been administratively denied.³⁸ This comment falls short of Baku's burden to prove that its application was denied arbitrarily because of animus toward Baku or Mr. Sabri.

Likewise important, the City approved sidewalk café operations for El Nuevo Rodeo and both restaurant and rental hall uses for Baku. This evidence undercuts Baku's claim that any business associated with Mr. Sabri faces discriminatory treatment by the Department of Regulatory Services. What this evidence does suggest is that the

³⁷ *Baku Entertainment's Post Hearing Brief* at 3.

³⁸ Ex. 202.

City favors food service uses, and disfavors potentially large nightclub-like operations, in this section of Lake Street.

Baku's citation of *Paron v. City of Shakopee*, 32 N.W.2d 603 (Minn. 1948) does not lead to a different conclusion. In *Paron*, the Shakopee City Council had approved nine applications for on-sale liquor licenses. The City was later advised by the state liquor control commissioner that it could, based upon Shakopee's population, only issue five such licenses. So advised, the City Council then voted to direct the Mayor and the City Recorder to endorse and deliver licenses to a designated subset of the nine applicants. The four applicants who did not receive one of the endorsed licenses sued to set aside as invalid the five licenses that were issued. The District Court dismissed the challenge to the grant of licenses and the Minnesota Supreme Court affirmed this judgment. Holding that the plaintiffs did not have a sufficient stake in the issuance of a license to another vendor, so as to maintain a lawsuit, the Court wrote:

As stated, we are sustaining the demurrers here on the ground that plaintiffs have no interest in the liquor licenses issued to the five defendants which is different in legal character from that of any other citizens or taxpayers in Shakopee. We are not here approving or condoning any practice whereby local governing bodies may issue licenses to sell intoxicating liquor in violation of the liquor control act. While the council may exercise wide discretion as to the issuance of liquor licenses, it is a fundamental intention of the law that in exercising this discretion it must examine and investigate the conditions within the municipality in an official capacity in an effort fairly to determine the matter from the standpoint of upholding the law and doing what it believes best for the welfare of the municipality, and not from a personal, arbitrary, or capricious standpoint.³⁹

Because Baku is not challenging the issuance of a license to any other entity, and the Department of Regulatory Services did "examine and investigate the conditions within the municipality ...in an effort fairly to determine the matter from the standpoint of upholding the law and doing what it believes best for the welfare of the municipality," *Paron* does not urge a different result in this case. The application for a Class B On-Sale Liquor License submitted by of Baku Entertainment & Restaurants, LLC and Fatemeh Engen should be denied.

E. L. L.

³⁹ *Paron v. City of Shakopee*, 32 N.W.2d 603, 611-12 (Minn. 1948).